

General Information Letter: Sale of property in the ordinary course of business does not require bulk sale report.

September 26, 2002

Dear:

This is in response to your letter dated September 3, 2002 in which you request a written determination that the transaction described in your letter is exempt from Section 902(d) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*) and the companion provisions of the Retailers' Occupation Tax Act. The following is in response to your request with respect to Illinois income tax. Your request with respect to sales tax has been referred to the Sales Tax Division.

The nature of your request and the information you have provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on the Department's web site at www.ILtax.com.

Your letter states as follows:

I am writing in response to your letter dated August 28, 2002. We are requesting a written determination that the transaction detailed below is exempt from Section 902(d) of the Illinois Income Tax Act and the companion provisions of the Illinois Retailers Occupation Tax Act.

The transaction is as follows:

Our client, COMPANY is a home builder/real estate developer. They have contracted to sell 130 acres of real estate located in CITY, Illinois. There is no building on the real estate, its completely vacant.

COMPANY is in the business of building homes and developing real estate. This transaction is in no way liquidating, nor outside the scope of its usual course of business. COMPANY routinely buys and sells land as part of its home-building business.

Moreover, the land involved in the transaction is not a major asset as defined by Section 902(d) because the value of the land is less than 50% of the combined value of all real estate owned by COMPANY. COMPANY will continue its regular course of business, of building homes and developing real estate, following the completion of the transaction.

RULING

Section 902(d) of the IITA states in part:

If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, or (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such assets shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets.

Your letter indicates that the taxpayer intends to sell 130 acres of certain real estate used in its business, and that such sale is not outside the usual course of its business. Therefore, provided that such real estate does not constitute the major part of any of the classes of assets specified in Section 902(d) of the business with respect to which such real estate is used, such sale is not subject to the provisions of Section 902(d).

As indicated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.110(b). If you have further questions regarding this GIL, feel free to contact me at (217) 782-7055.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)